

State of New York)

: ss.:

County of Suffolk )

ANITA S. KATZ and NICK LALOTA, being duly sworn, depose and say:

1. We are the Commissioners of the Suffolk County Board of Elections (hereinafter collectively referred to as the "Board") in the above entitled matter.

2. We are personally familiar with the facts and circumstances herein and submit this joint affidavit in opposition to the petition and in support of dismissal for the reasons set forth herein:

3. Upon information and belief, Petitioner seeks to be placed on the ballot for the Federal Primary Election scheduled for June 28, 2016. For the reasons set forth below, the application should be denied and the ballot left as it now stands so as to not disenfranchise members of our military.

4. The Federal Primary Election is scheduled for June 28, 2016, less than 7 days from now. Generally, between 11 days and four weeks are necessary to implement procedures to prepare for an election. In order to be ready to conduct elections on June 28th, it was necessary to implement preparatory procedures several weeks ago. For the reasons that follow, we respectfully submit that we have reached the point in time when it is impossible to effectuate any change to the ballot in time for the election.

5. As a result of the extensive and time consuming procedures that accompany the use of electronic voting machines in order to ensure accuracy, reliability and security of the voting process, a change to the paper ballot as sought by petitioner

would require that the Board “scrap” all preparations to date and restart the process. It is physically impossible for the Board to complete what would be required to prepare and conduct the election without at least two weeks to do all of the physical work programming the machines that is required.

6. As the Court is aware, during elections, voters generally mark a paper ballot at a designated polling place in the election district where they live that lists the candidates and the party lines. The paper ballot is then scanned into an electronic scanning machine known as a ballot scanner where the vote is then counted and the paper deposited into a secured receptacle. In addition to the manual mark ups of the ballot by the voter in a privacy booth, there also exists the option to use ballot marking devices (hereinafter “BMD”) which may be used by voters with disabilities or any other voter. The BMD will print the ballot with the voter’s selection.

7. Whichever method is used, the paper ballot marked with the voter’s choices is inserted into the scanner machine which scans the ballot and records an image of the ballot on a removable memory card. The scanner will count the ballots and when the polls close, will print out the results at the polling place.

8. Additionally, on the night of the election, the secured receptacle containing the paper ballots, the memory card and any paper ballots, such as affidavit ballots, are returned to the Board. The memory cards are thereafter inserted into a computer at the Board which will notify us of the precincts that have reported the results of the election.

9. Preparation for the election begins with sending a pdf of the ballot to the printer who prints a proposed ballot for the Board's review and final approval to print more than 50,000 ballots.—After the ballot is approved absentee ballots are sent to those who have requested them. Members of the United States Armed Forces are afforded 45 days of lead time prior to the election in order to ensure their much deserved participation. If the ballot is now changed there will not be enough time to mail absentee ballots to members of the military as required by federal law and the order of the Federal District court.

10. Additionally, the software programming of all the memory cards for each of the 913 voting systems used in Suffolk County (ballot scanners and BMDs) has been completed. As noted earlier, each ballot scanner and BMD operates from memory cards that inform the machine of the information for each particular contest. The ballot for each election is produced by election management software which is programmed onto the memory cards for each scanner and BMD. Upon completion of this process, there can be no change to the program without restarting the process of reprogramming each memory card.

11. Once the memory cards are programmed and inserted into the machines, the Board then commences the comprehensive testing of the scanners and BMDs. A comprehensive test deck is run for each unique ballot layout which in Suffolk comprises 20 ballots. In addition, a smaller test deck is run through every ballot scanner (total of 4,624 ballots). This process usually begins three weeks prior to the election as it generally takes approximately two weeks to complete this part of the process. This type



of logic and accuracy testing is mandated and is essential to ensure the machines are functioning accurately. This entire process is only a day or two from completion.

12. The software programming for the election process is very complicated and extensive in order to ensure the integrity of the process. Controls are built into the system to avoid incorrect tabulations as well as intentional tampering.

13. The election management software utilized in programming the memory cards contains the same data used by the election night reporting software which tallies the election results. The ballots themselves will contain “timing marks” or codes that the ballot scanners will read in order to identify the voting targets as voting for a particular office or proposition. Simply put, the software that is utilized in the creation of the ballots for each election district, the memory cards and the Board’s computer that tallies the results from the memory cards are all interrelated. The change sought by petitioner will require that all ballots be reprinted, all memory cards be reprogrammed and all machines be retested for every election in every election district. Failure to do so will jeopardize the entire election.

14. The Board intends to commence deploying a total of 913 ballot scanners to the 683 election districts on June 21 as it usually takes a minimum of 3 days to transport all of the machines barring any complications, such as weather.

15. In accordance with Section 4-118 of the NYS Election Law, the Board did not publicly notice a Republican Primary in Congressional District 3.

16. In light of the foregoing, we urge the Court to dismiss the instant petition.

*Anita S. Katz*

Anita S. Katz, Democratic Commissioner  
Suffolk County Board of Elections

*Nick LaLota*

Nick LaLota, Republican Commissioner  
Suffolk County Board of Elections

Sworn to before me this  
21 day of June, 2016

Sworn to before me this  
21 day of June, 2016

*Elizabeth Manzella*

Notary Public

*Elizabeth Manzella*

Notary Public



Elizabeth Manzella  
Notary Public  
State of New York  
County of Suffolk  
Reg# 01MA6149592  
Term Expires

7-10-18



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